

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 27 TH DAY OF May 1998

BEFORE

THE HON'BLE MR.JUSTICE H.RANGAVITTALACHAR

HRRP No.1451 of 1993

Between

Between :

Mohammed Haneed Ahammed Sab,
Tatwangai, age: 80 years,
r/o.Azaad Lane, Haliyal Proper..

since deceased by his l.r.s

- (a) Smt.Bishabhi Kom Mohammed
Haneed Tatwanagi; Major.
- (b) Mohammed Adber , s/o.Mohammed
Haneef Tatwanagi; Major.
- (c) Moulasab, s'o.Mohammed Haneef Tatwanagi,
Major,
- (d) Hasansab, s/o.Mohd.Haneef Tatwanagi,
Major,
- (e) Mohammed RAfiq, s/o.Mohd.Haneef Tatwanagi,
Major,
- (f) Smt.Fatimabi, w/o.Abbasali,
Major, r/o.Alnavar, Dist.Dharwad.
- (g) Smt.Mehaboobi, w/o.Liyakat
Ali, Major, r/o.Dodwad, Bailhongal Taluk.
- (h) Jubedabi, w/o.Kiktum Hussain, major,
r/o.Dodwad, Bailhongal Taluk.
- (i) Smt.Rehanabi Bagum, w/o.Imam Hussain,
Major, r/o.M.K.Hubli, Bailhongal Taluk.
.. Petitioners..

(By Sri.G.S.Kannur - Adv.)

And :

1. Mohammed Usman Ahamad Sab,
Topinkatti, Aged: 69 years,
Professor, r/o.House No.3320,
Bashikam Compund, Behind Bazaar,
Belgaum.
2. Mohammed Jamil Ahamed Sab Topinkatti,
aged: 67 years, r/o.House No.122,
5th Block Government Quarters, BTS
Road, Wilson Garden, Bangalore - 27.
represented by GPA Mohammed Usman
Ahamad Sab Topinkatti, respondent No.1
above. .. RESPONDENTS

(By Sri.Madhusudahan R Naik - Adv.)

This CRP is filed under Sec.115 of CPC against the order dtd.13.8.1993 passed in Rent Rev.8/89 on the file of the Dist.Judge, Karwar dismissing the revision petition by confirming the order dtd.28.2.89 passed in HRC No.3/78 passed by the Munsiff & JMFC, Huliya.

This CRP coming on for hearing this day, the Court made the following:

H.Rv

O R D E R..

ORDER

Respondents to this petition filed an eviction petition against the petitioners in respect of a residential house situated at Halial Town, Dharwad District on the ground that the petitioners/tenants inspite of a notice of demand to pay the arrears of rent under sec.21(1)(a) have failed to pay the same nor offered any explanation for committing the default. Hence liable to be evicted.

This petition was contested by the petitioner by filing a detailed statement of objections; The learned Munsiff after appreciation of the evidence held that to the notice issued by the landlord vide Ex.P.5 dtd.9.8.1975 received by the tenants vide acknowledgement Ex.P.6, the tenant/petitioner herein did not pay the demanded rents, therefore liable to be evicted under Sec.21(1)(a) of the Karnataka Rent Control Act; Aggrieved by the said order, petitioners herein preferred a Rent Revision before the learned Dist.Judge, Dharwad. Learned Dist.Judge also concurred with the findings of the learned ^{Munsiff} District Judge and

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dismissed the petition. These two orders have been challenged by the tenants in this revision petition.

The only contention raised by the learned counsel appearing for the petitioner in this case is that though a notice demanding them to pay the rents was issued in 1975, the landlord filed the petition 3 years thereafter and the said delay should be held to defeat the claim. This contention was urged before the learned Dist.Judge also who has repelled by holding that there is no limitation prescribed under the Karnataka Rent Control Act to approach the Court within any definite time. It is a well known ~~fact~~ ^{fact} that if the the tenant does not pay the demanded arrears of rent due when he receives a notice under Sec.21(1)(a) within the statutory period or offers sufficient explanation for committing default, Courts have no option but to order eviction. Under such circumstances, delay cannot be construed as amounting to waiver of the right.

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There is no merit in the petition. Petition is liable to be dismissed and is accordingly dismissed.

At this stage, learned counsel appearing for the tenant submitted that the tenants are very poor persons, now they have cleared the entire arrears of rent and it is difficult to obtain an alternative accommodation suiting their means and therefore they require atleast 3 years time to mobilise enough resources to acquire an alternative house.

On the other hand, learned counsel appearing for the respondents opposed granting of any time beyond one year.

Having regard to the facts and circumstances of the case viz., that the tenants are poor persons and the difficulty in mobilising the resources, 2 years time is granted to the tenants from today to quit and deliver vacant possession of the premises to the landlord subject to the following conditions:

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(a) that the petitioners shall file an affidavit undertaking to voluntarily vacate the expiry within 2 years from today. The said affidavit shall be filed within a period of 6 weeks from today after serving a copy on the otherside.

(b) that the petitioners shall pay the rents regularly as and when it falls due without any default.

(c) that the petitioners shall not sublet or sublease the premises.

Petition dismissed.

Sd/-
JUDGE

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